IN THE

# Supreme Court of the United States

OCTOBER TERM, 1947.

No. 688

G. H. BEAVERS, *Petitioner,*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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March 24, 1948.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

## INDEX.



## TABLE OF CASES CITED.



## OTHER AUTHORITIES CITED.

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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*To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:*

G. H. Beavers prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above-entitled case December 26, 1947 (R. 38). The Circuit Court affirmed a decision of The Tax Court of the United States (R. 17) sustaining a deficiency in gift tax liability for the calendar year 1943, against G. H. Beavers in the amount of $7,886.79.

### JURISDICTION.

The judgment of the Circuit Court of Appeals sought to be reviewed was entered December 26, 1947. Jurisdiction to issue the writ requested is found in Section 240 of the Judicial Code as amended by the Act of February 13, 1925.

## QUESTION PRESENTED.

Is section 1000(d), Internal Revenue Code, which was added to the Code by section 453 of the Revenue Act of 1942, constitutional? [1]

The said section provides that all gifts of community property shall be considered to be the gifts of the husband, except that gifts of such property as may be shown to have been received as compensation for personal services actually rendered by the wife, or derived originally from such compensation or from separate property of the wife shall be considered to be the gifts of the wife.

## SUMMARY STATEMENT OF MATTER INVOLVED.

The facts pertinent to this petition, which appear at pages 25-31 of the record, may be summarized as follows:

The petitioner and his wife are and, at all times herein material, were residents of Benjamin, Texas. Prior to and on April 21, 1943, petitioner and his wife, Linnie D. Beavers, owned in community certain land in Knox County, Texas.

On April 21, 1943, wholly without consideration, petitioner and his wife executed a deed transferring 12,138 acres of the said land in Knox County, Texas (exclusive of an undivided one-half interest in the mineral rights retained by the grantors) to their two children.

Under the constitution and laws of the State of Texas, the said lands made the subject of the gift were community property of petitioner and his wife. No part of such property, or the funds used to procure such property, was received as compensation for personal services actually rendered by the wife or derived originally from such compensation or from the separate property of the wife.

Petitioner reported one-half of the value of the property as his gift, and his wife reported the other one-half as hers. Under the authority of § 1000(d) of the Internal Revenue Code, the Commissioner of Internal Revenue taxed the en-

[1] Section 1000(d) is printed in full at page 6 of this petition.

tire value of the gift to petitioner. Appealing to The Tax Court, petitioner attacked as unconstitutional the section under which the Commissioner's determination was made. That Court held on the authority of *Charles I. Francis* v. *Commissioner,* 8 T. C. 822 that the assailed statute was constitutional and affirmed the Commissioner's determination.

The Circuit Court of Appeals affirmed The Tax Court on the authority of *Fernandez* v. *Wiener,* 326 U. S. 340 and *United States* v. *Rompel,* 326 U. S. 367.

## REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

### I.

**The case presents an important question of federal law which has not been, but should be, settled by this Court.**

This Court has not ruled upon the constitutionality of § 1000(d),[2] Internal Revenue Code. All residents of the several community property states who have made or may make gifts of community property are affected by the section. It is important to this large group of citizens that this Court pass on the constitutionality of the section.

### II.

**The reasoning of this Court in Fernandez v. Wiener, 326 U. S. 340, and United States v. Rompel, 326 U. S. 367, is not applicable to the question here presented.**

The Revenue Act of 1942 added to the Internal Revenue Code not only the section here assailed but also a companion section (811(e)(2)[3]) dealing with estate taxes on community property. This Court in the *Wiener* and *Rompel* cases sustained the constitutionality of the estate tax amendment on the reasoning that upon the death of one

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[2] Section 1000(d) is printed in full at page 6 of this petition.

[3] Section 811(e)(2) is printed in full at page 6 of this petition.

spouse the surviving spouse acquired a bundle of rights of management not theretofore held. The acquisition of such new rights was held to justify the imposition of the excise.

In the case at bar there was a gift of community owned real estate. By making the gift neither spouse acquired rights not previously held. Consequently, the reasoning of the *Wiener* and *Rompel* cases cannot apply to the case at bar. The following language shows the correctness of petitioner's position.

This Court, in the *Rompel* case, states at page 370:

> "The death of either the husband or the wife of the Texas community thus effects sufficient alteration in the spouses' possession and enjoyment and reciprocal powers of control and disposition of the community property as to warrant the imposition of an excise tax measured by the value of the entire community."

In the *Wiener* case, this Court states at page 358:

> "* * * While it may generally be true, as appellees argue, that neither the husband or the wife gains any over-all financial advantage when the other dies, it suffices that the decedent loses and the survivor acquires, with respect to the property taxed, substantial rights of enjoyment and control which may be of value. * * *"

If the rule of *stare decisis* is to be followed, Courts should apply the reasoning and logic of prior decisions. Such was not done by the Courts below in the case at bar. This Court should pass on the important question here involved.

## III.

**The decision below is in conflict with Hoeper v. Tax Commission of Wisconsin, 284 U. S. 206.**

In the case at bar petitioner's tax is measured by his wife's property. This Court in the *Hoeper* case states:

> "We have no doubt that, because of the fundamental conceptions which underlie our system, any attempt by

a state to measure the tax on one person's property or income by reference to the property or income of another is contrary to due process of law as guaranteed by the 14th Amendment. That which is not in fact the taxpayer's income cannot be made such by calling it income. * * *"

The *Hoeper* case refers to the 14th Amendment. There is no reason, however, why the reasoning does not apply with equal force to the 5th Amendment. Estate tax laws have been held to violate the 5th Amendment.

It is thoroughly established that a wife has a present vested interest equal to the husband in community property. *Hopkins* v. *Bacon,* 282 U. S. 122. The challenged section attempts to levy a tax on a gift of property not owned by the donor. In so doing, it is arbitrary and capricious, and violates the due process clause of the 5th Amendment.

Respectfully submitted,

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*Attorney for Petitioner.*

March 24, 1948.

## APPENDIX.

**Sections 811 (e)(2) and 1000(d), Internal Revenue Code.**

Section 811(e)(2) Community interests.—To the extent of the Interest therein held as community property by the decedent and surviving spouse under the law of any State, Territory, or possession of the United States, or any foreign country, except such part thereof as may be shown to have been received as compensation for personal services actually rendered by the surviving spouse or derived originally from such compensation or from separate property of the surviving spouse. In no case shall such interest included in the gross estate of the decedent be less than the value of such part of the community property as was subject to the decedent's power of testamentary disposition.

Section 1000(d). Community Property.— All gifts of property held as community property under the law of any State, Territory, or possession of the United States, or any foreign country shall be considered to be the gifts of the husband except that gifts of such property as may be shown to have been received as compensation for personal services actually rendered by the wife or derived originally from such compensation or from separate property of the wife shall be considered to be gifts of the wife.

# INDEX



## CITATIONS





784765—48

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*v.*

COMMISSIONER OF INTERNAL REVENUE

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## BRIEF FOR THE RESPONDENT IN OPPOSITION

### OPINIONS BELOW

The memorandum opinion of the Tax Court (R. 13–17) is not reported. The opinion of the Circuit Court of Appeals (R. 35–36) is reported at 165 F. 2d 208.

### JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 26, 1947. (R. 37.) The petition for a writ of certiorari was filed on March 24, 1948. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

### QUESTION PRESENTED

Section 1000 (d) of the Internal Revenue Code taxes all gifts of community property to the husband, except for property which is received by the wife as compensation for personal services or which is derived from such compensation or from her separate property.

Did the court below err in holding that the legislation is constitutionally valid?

### STATUTES AND OTHER AUTHORITIES INVOLVED

The pertinent provisions of the statutes and other authorities involved are set forth in the Appendix, *infra*, pp. 7–11.

### STATEMENT

The facts in this case were stipulated by the parties (R. 25–31) and were found by the Tax Court as stipulated (R. 13–16). The taxpayer and his wife are residents of Benjamin, Texas, and have two children. Prior to April 21, 1943, they owned certain land in Knox County, Texas; under the laws of Texas the property was community property of the taxpayer and his wife. No part of the property (or the funds used to procure it) was received as compensation for personal services actually rendered by the wife or was derived from such compensation or from separate property. On April 21, 1943, by a deed which was signed by the taxpayer and his wife, the property was transferred to their two children, an undivided one-half interest in the min-

eral rights being retained by the grantors. The transfer was made wholly without consideration. The agreed value of the property transferred was $80,690. (R. 13–16.)

On March 15, 1944, the taxpayer filed a gift tax return in which he reported only one-half of the value of the gift. (R. 14.) The Commissioner determined a deficiency in gift tax on the ground that the entire value of the property should have been included in the taxpayer's return. (R. 6–10.) The Tax Court sustained the Commissioner's deficiency determination. (R. 13–17.) The Circuit Court of Appeals, *per curiam*, affirmed the decision of the Tax Court. (R. 35–36.)

ARGUMENT

1. The decision below is correct in holding that Section 1000 (d) of the Internal Revenue Code constitutes a valid exercise of the taxing power of Congress. That section, which was added to the Code by Section 453 of the Revenue Act of 1942, Appendix, *infra*, paralleled the amendments made to the estate tax law (Sections 402 and 404 of the Revenue Act of 1942) which were considered by this Court in *Fernandez* v. *Wiener*, 326 U. S. 340, and in *United States* v. *Rompel*, 326 U. S. 367. These additions to the Code were designed to equalize the estate and gift tax burdens in states having a community property system as well as in those where that system does not prevail, and to remove the special privileges pre-

viously enjoyed in the community property states. H. Rep. No. 2333, 77th Cong., 2d Sess., pp. 35–37, 160, 169 (1942–2 Cum. Bull. 372, 401–402, 489, 496); S. Rep. No. 1631, 77th Cong., 2d Sess., pp. 231–232, 243 (1942–2 Cum. Bull. 504, 673–674, 682); H. Conference Rep. No. 2586, 77th Cong., 2d Sess., pp. 1–2 (1942–2 Cum. Bull. 701). Section 1000 (d) accomplishes this by taxing all gifts of community property to the husband, except that such portions of the gift as are attributable to the separate property of the wife or to the earnings from her personal services are taxable to her. Section 1000 (d), as further amended by Section 371 of the Revenue Act of 1948, Public Law 471, 80th Cong., 2d Sess., does not disturb the tax in this case for the section expressly remains applicable to gifts made after the calendar year 1942 and prior to the enactment of the Revenue Act of 1948.

*Fernandez* v. *Wiener* and *United States* v. *Rompel, supra,* in upholding the estate tax amendments relating to the community property states, demonstrate that the gift tax amendment is equally valid. The broad powers of the husband in Texas over the community estate, including his authority to make a gratuitous conveyance (Art. 4619, Vernon's Texas Civil Statutes (Appendix, *infra*)), are a reasonable basis upon which Congress could impose an excise tax on him for having exercised the privilege of making the transfer. Although there is no constitutional requirement

that this be done, the exclusion from the tax on the husband of the value of property which is economically attributable to the wife demonstrates that Congress has acted reasonably and has not even approached the outer limits of its constitutional authority. Cf. *Fernandez* v. *Wiener, supra,* pp. 358–359. The shift in economic interests brought about by the person empowered to make a transfer is a sufficient occasion for the imposition of the excise tax on the transferor, even where the rights of others are affected by the transfer and even though the transferor does not possess complete and untrammelled ownership of the property. *Fernandez* v. *Wiener, supra; United States* v. *Rompel, supra; Tyler* v. *United States,* 281 U. S. 497; *United States* v. *Jacobs,* 306 U. S. 363; *Porter* v. *Commissioner,* 288 U. S. 436; *Helvering* v. *Bullard,* 303 U. S. 297. Cf. *Whitney* v. *Tax Commission,* 309 U. S. 530; *Graves* v. *Schmidlapp,* 315 U. S. 657.

To the extent that the taxpayer relied below on the due process clause of the Fifth Amendment (Appendix, *infra*) as invalidating the legislation, there is plainly no serious constitutional question raised by the petition. To the extent that the taxpayer also contended below that Section 1000 (d) offended the uniformity clause of Article 1, Section 8 of the Constitution (Appendix, *infra*), no substantial constitutional question is raised. Since the statute operates in a geographically uniform manner wherever the subject matter is

found, it is well settled that the uniformity requirements of that clause of the Constitution are fully met. *Fernandez* v. *Wiener, supra,* p. 361; *Riggs* v. *Del Drago,* 317 U. S. 95, 102; *Florida* v. *Mellon,* 273 U. S. 12, 17; *Knowlton* v. *Moore,* 178 U. S. 41, 83–109.

2. There is no conflict in decisions. *Hoeper* v. *Tax Commission,* 284 U. S. 206 (Pet. 4–5), is not opposed. The gift tax, like the estate tax, is not a property tax, but is an excise levied on the privilege of making a transfer of property. *Bromley* v. *McCaughn,* 280 U. S. 124; *Fernandez* v. *Wiener, supra.* Accordingly, the tax here, not being a tax on property, is not taxing the husband on property which he does not own. The *Hoeper* case is no more in point here than it was in the *Wiener* and *Rompel* cases, *supra,* where a similar contention was made and rejected.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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THERON LAMAR CAUDLE,
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APRIL, 1948.

## APPENDIX

Constitution of the United States:

ARTICLE I

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Internal Revenue Code:

SEC. 1000 [as added by Section 453 of the Revenue Act of 1942, c. 619, 56 Stat. 798]. IMPOSITION OF TAX

* * * * *

(d) *Community Property.*—All gifts of property held as community property un-

der the law of any State, Territory, or possession of the United States, or any foreign country shall be considered to be the gifts of the husband except that gifts of such property as may be shown to have been received as compensation for personal services actually rendered by the wife or derived originally from such compensation or from separate property of the wife shall be considered to be gifts of the wife. * * * (26 U. S. C. 1940 ed., Sec. 1000.)

Treasury Regulations 108, promulgated under the Internal Revenue Code:

SEC. 86.2 *Transfers Reached.*—

* * * * *

(c) *Transfers of community property after 1942.*—During the calendar year 1943 and any calendar year thereafter any gift of property held as community property under the law of any State, Territory, or possession of the United States, or any foreign country constitutes a gift of the husband for the purpose of the gift tax statute (regardless of whether under the terms of the transfer the husband alone or the wife alone is designated as the donor or whether both are so designated as donors), except to the extent that such property is shown (1) to have been received as compensation for personal services actually rendered by the wife or derived originally from such compensation, or (2) to have been derived originally from separate property of the wife. The entire property comprising the gift is prima facie a gift of the husband, but any portion thereof which is shown to be economically attributable to the wife as prescribed in the preceding sentence constitutes a gift of the wife.

The rule stated in the preceding paragraph applies alike to a transfer by way of gift of community property to a third party or third parties, to a division of such community property between husband and wife into the separate property of each, and to a transfer by the husband and wife of any part of such community property into the separate property either of the husband or of the wife, or into a joint estate or tenancy by the entirety of both spouses. In all of such cases the value of the property so transferred or so divided, as the case may be, is a gift by the husband to the extent that it exceeds the aggregate amount of the value of that portion which is shown to be economically attributable to the wife, as prescribed in the preceding paragraph, and of the value of the husband's interest in such property after such transfer or division. The value of the property so transferred or so divided, as the case may be, is a gift by the wife to the extent that the portion of such value which is shown to be economically attributable to her, as prescribed in the preceding paragraph, exceeds the value of her interest in such property after such transfer or division. See examples (5) and (6) of subsection (a) of this section. No gift tax results from a transfer on or after January 1, 1943, of separate property of either spouse into community property.

Property derived originally from compensation for personal services actually rendered by the wife or from separate property of the wife includes property that may be identified as (1) income yielded by property received as such compensation or by such separate property, and (2) property clearly traceable (by reason of ac-

quisition in exchange, or other derivation) to property received as such compensation, to such separate property, or to such income. The rule established by this statute for apportioning the respective contributions of the spouses is applicable regardless of varying local rules of apportionment, and State presumptions are not operative against the Commissioner.

13 Vernon's Texas Civil Statutes:

ART. 4616. *Wife's separate property protected.*—Neither the separate property of the wife, nor the rents from the wife's separate real estate, nor the interest on bonds and notes belonging to her, nor dividends on stocks owned by her, nor her personal earnings, shall be subject to the payment of debts contracted by the husband nor of torts of the husband.

* * * * *

ART. 4619. *Community property.*—SEC. 1. All property acquired by either the husband or wife during marriage, except that which is the separate property of either, shall be deemed the common property of the husband and wife; and all the effects which the husband and wife possess at the time the marriage may be dissolved shall be regarded as common effects or gains, unless the contrary be satisfactorily proved. During coverture the common property of the husband and wife may be disposed of by the husband only; provided, however, if the husband shall have disappeared and his whereabouts shall have been and remain unknown to the wife continuously for more than twelve months, the wife shall after such twelve month period and until the husband returns to her and the affidavit hereinafter provided for is made and filed

for record, have full control, management and disposition of the community property, and shall have the same powers with reference thereto as are conferred by law upon the husband, and her acts shall be as those of a femme sole.

* * * * *

ART. 4620. *Community property liable for debts.*—The community property of the husband and wife shall be liable for their debts contracted during marriage, except in such cases as are specially excepted by law.

ART. 4621. *Community property not liable.*—The community property of the husband and wife shall not be liable for debts or damages resulting from contracts of the wife except for necessaries furnished herself and children, unless the husband joins in the execution of the contract; provided, that her rights with reference to the community property on permanent abandonment by the husband shall not be affected by this provision.

* * * * *

ART. 4623. *Subject to debts of wife.*—Neither the separate property of the husband nor the community property other than the personal earnings of the wife, and the income, rents and revenues from her separate property, shall be subject to the payment of debts contracted by the wife, except those contracted for necessaries furnished her or her children. The wife shall never be the joint maker of a note or a surety on any bond or obligation of another without the joinder of her husband with her in making such contract.

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